

# **Exhibit 4**

1 66T8GYAC  
1 UNITED STATES DISTRICT COURT  
1 SOUTHERN DISTRICT OF NEW YORK  
2 -----x  
2  
3 KWABENA GYASI,  
3  
4 Plaintiff,  
4  
5 v. 05 Cv. 9453 (SAS)  
5

6 THE CITY OF NEW YORK, et al.,  
6  
7 Defendants.

June 29, 2006  
4:40 p.m.

10 Before:

HON. SHIRA A. SCHEINDLIN

District Judge

## APPEARANCES

14 JOEL BERGER  
15 Attorney for Plaintiff

15  
16 MICHAEL A. CARDOZO  
16 Corporation Counsel of the City of New York  
17 SHERYL BRUZZESE  
17 Assistant Corporation Counsel

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1 (In open court)

2 THE COURT: Mr. Berger, good afternoon.

3 Ms. Bruzzese, good afternoon.

4 I have two letters here, June 26 from Mr. Berger, June  
5 29 in response from you, Ms. Bruzzese.

6 Is this the only purpose for this conference?

7 MR. BERGER: Yes, your Honor. The conference was  
8 previously scheduled. It was supposed to be a final status  
9 conference, and we have asked your Honor to extend the time for  
10 discovery, which you have done, but we asked that this date be  
11 preserved because we knew this issue was coming.12 THE COURT: I have read the two letters and the long  
13 and short is, when is the appropriate time? The city is saying  
14 it's premature. You say it would be fine to defer such  
15 discovery until a charging conference conducted while the jury  
16 is waiting to receive the case. That's probably true too, but  
17 that's not now either. It's early now; it's late then. So  
18 when is the right time?19 MR. BERGER: I think the city would like to never  
20 answer frankly. That's my concern. I have no problem if the  
21 city takes another month, two months, whatever.22 THE COURT: I don't know if they are going to move for  
23 summary judgment. They seem to do it reflectively when they  
24 shouldn't.

25 Are you going to move for summary judgment in this

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2 case?

3 MS. BRUZZESE: At this point, I am not sure. I need  
4 to take the deposition of the plaintiff and the two witnesses.  
5 There may be disputed facts.

6 THE COURT: This person did what?  
7 MR. BERGER: This person was arrested and run through  
8 the system for making a photocopy of his own certificate of  
9 title of his own vehicle. I must point out because the city  
10 repeatedly misstates the facts. For example, if you look at  
11 footnote 2 of Ms. Bruzzese's letter, she says plaintiff  
12 insisted the copy was an original. If you look at the  
13 officer's write-up of the charges, he quotes Mr. Gyasi as  
14 saying, "No, I photocopied it myself."

15 The officer knows that this is a bizarre arrest and  
16 keeps changing his story. He arrested Mr. Gyasi for making a  
17 photocopy of his own certificate of title and charged him with  
18 a felony forgery for doing it. That's why this case is going  
19 to trial and that's why there is a good chance of punitive  
20 damages, because the one and only time this ever happened, in a  
21 case before Judge Schwartz a few years ago, punitive damages  
22 were awarded because it's such a bizarre thing. Obviously, if  
23 you make photocopies of official documents for purposes of  
24 misleading somebody, if it's somebody else's document, but it's  
25 your own document and it hasn't been altered.

Incidentally, the back of this document proved that

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1 title had been transferred to Mr. Gyasi and the officer -- the  
2 photocopy was two pages, not front and back. The officer  
3 detached the back of the second page from the first page and  
4 only vouchered the first page as evidence. The second page  
5 that proves it was transferred to Mr. Gyasi and that there was  
6 no chance of it being a stolen vehicle wasn't even vouchered as  
7 part of the criminal charges.

8 The case is going to trial. I have no problem with  
9 the city taking a month or two if it wants to canvass various  
10 executives to find out --

11 THE COURT: Slow down. Assuming we were at this  
12 separate hearing before the jury got the punitive damages  
13 issue, what would be the point, that the jury would know that  
14 the city is going to indemnify the defendant?

15 MR. BERGER: Yes, your Honor.

16 Furthermore, many judges don't even hold a separate  
17 hearing. I don't know if you do or don't. The issue often  
18 just comes up at the initial charging, which is that in every  
19 case I have been involved in, and I have consulted with many  
20 colleagues in civil rights cases, the city always wants the  
21 jury to be told, Oh, you can only award punitives against the  
22 officer individually, not the city.

23 THE COURT: That's true.

24 MR. BERGER: It's also extremely misleading because it  
25 leads the jury to believe that the poor officer is going to be

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1 left holding the bag. Which is why we frequently get punitives  
2 for a thousand, two thousand, whatever.

3 The reality is, and those of us who have tracked this  
4 for years know it, if the city has represented the officer, if  
5 it's a case in which the city has determined the officer is  
6 entitled to representation, it's not an off-duty incident, the  
7 city invariably does indemnify.

8 THE COURT: Do you dispute that, Ms. Bruzzese, that at  
9 the end of the day, if this was done in the line of duty during  
10 work hours as part of his regular job, when push comes to  
11 shove, you will indemnify him if there is punitive damages? Do  
12 you dispute that?

13 MS. BRUZZESE: Not necessarily.

14 THE COURT: Not necessarily what? Was the answer yes?

15 MS. BRUZZESE: We do dispute that. Under 50(k), if  
16 punitive damages are awarded, there is a finding by the jury  
17 that basically the officer violated the rules and regulations,  
18 and under that --

19 THE COURT: I understand. But Mr. Berger claims the  
20 reality is, despite that, you always indemnify the officer for  
21 punitive damages, and that's why he wants the discovery,  
22 because I agree with him, I am not going to mislead the jury.

23 If in fact discovery were to show that 99 out of 100  
24 times when there has been a punitive damage award, in reality,  
25 the city has always indemnified, then that's the reality.

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1 That's the reality, and I am not charging something that's not  
2 true.

3 MS. BRUZZESE: The problem is that I don't understand  
4 what claim this goes to. The discovery needs to likely lead to  
5 the discovery of admissible evidence.

6 THE COURT: Yes. I will not mischarge the jury.

7 MS. BRUZZESE: We haven't even gotten to that point.

8 THE COURT: I am not talking about when. Put aside  
9 when. Not today or a month or two months. I am thinking of  
10 ever. Unless you're prepared to concede that if a punitive  
11 damage award is made by the jury, the city will pay, at some  
12 point this discovery is necessary so as not to mislead the  
13 jury.

14 I am not talking about today. I am not going to rule  
15 today, but I want you to understand the issue. If this case  
16 goes to trial, if there is a liability finding, if the jury  
17 then gets punitive damages as an issue, I am not going to  
18 mislead them, thinking that it comes out of the poor officer's  
19 pocket and have the poor officer say, I have a wife and three  
20 kids and a mortgage, I can barely afford the payments, and I  
21 earn only 38,000, whatever. I am not going to have all of  
22 that. If in fact the reality is that in the last 100 punitive  
23 damages awards the city has always indemnified, I am not going  
24 to have that testimony at all about his wife, kids and poor  
25 salary, because it's all irrelevant.

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1 MS. BRUZZESE: I think that discovery comes into play  
2 when and if punitive damages are awarded.

3 THE COURT: I agree, for now. I just wanted to know  
4 if you really are disputing that the city is going to pay  
5 punitive damages if they are awarded.

6 MS. BRUZZESE: That's a decision that's over my head  
7 and that's made at the time punitive damages --

8 THE COURT: There is a historical record. That's the  
9 point of the discovery. It may be a decision over your head,  
10 but the decision may always come out the same way. If the  
11 conduct occurred during the line of duty, so to speak, if  
12 that's the reality, that discovery would show that in the last  
13 100 cases that punitive damages were awarded the city always  
14 paid, or 99 times out of 100 paid, if that's what the discovery  
15 would show, then I wouldn't allow any evidence at all about the  
16 poor officer and his tax return because it's totally  
17 irrelevant.

18 MS. BRUZZESE: My understanding is it's a case-by-case  
19 basis.

20 THE COURT: You're not listening. It is case by case,  
21 but if it always comes out the same way, then that's what the  
22 discovery would show. It's case by case, but at the end, if  
23 it's always the same, 100 times, that's what the reality is.

24 I am going to allow that discovery if and when this is  
25 an issue. It may never be an issue. The case may settle,

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1 liability may be lost, this and that. I have no idea what is  
2 coming, but somewhere down the road I am not going to mislead  
3 the jury to worry about the poor officer and his bills because  
4 that's irrelevant.

5 That's all I really need to say today.

6 MR. BERGER: Could we set some long-term date for the  
7 city to respond?

8 THE COURT: To respond to what?

9 MR. BERGER: To the interrogatories.

10 THE COURT: No. We will have to see how the case  
11 develops. When I set a trial date, when it's pretty clear we  
12 are going to trial because there is no settlement, because  
13 there is no summary judgment, when we know what the issues are  
14 for trial, we will worry about it then. I am not going to  
15 allow irrelevant testimony that is downright misleading. When  
16 the time comes, I will worry about it.

17 (Adjourned)

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